IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL NO 1041 of 2001
in
SPECIAL CIVIL APPLICATION NO 9796 of 2000
with
CIVIL APPLICATION NO 9225 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

GULAMNBHAI G SHAIKH HEAD CLERK

Appearance:

1. LETTERS PATENT APPEAL No. 1041/01 with CA 9225/01
MR NAGESH SUD, A.G.P. for Appellant No.
MR PS CHARI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 29/09/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

Joint Agricultural Director, Irrigation Project, Nadiad, District Kheda, of Government of Gujarat, passed an order dated 5.10.1993 to recover in all Rs.16,128/from the respondent. Rs.5376/- is the amount which was withdrawn wrongly by way of L.T.C. Plus Rs.10752/- penal interest on it. The said order was challenged by the respondents in Appeal before the Appellant No.2 Area Development Commissioner, which was also dismissed on 22.1.1997.

2. Aggrieved of the aforesaid orders passed by the Appellants, the respondent approached the Gujarat Civil Services Tribunal, Gandhinagar (for short "the Tribunal") by way of Appeal No.146 of 1997. The main contentions raised before the Tribunal by the respondent was that without holding regular inquiry in the matter the Authority passed the order of recovery on the basis of preliminary inquiry. This found favour with the Tribunal and accordingly the orders were quashed and set aside by the learned Tribunal by its Judgment and order dated 4.1.2000 and Appeal came to be allowed accordingly.

3. The Appellant - State of Gujarat and another aggrieved of the aforesaid Judgment and order passed by the learned Tribunal, allowing the Appeal filed by the respondent, approached this Court by way of Special Civil Application No.9796 of 2000 under Article 226 & 227 of the Constitution of India. Learned Single Judge of this Court (S.K.Keshote, J.) by his Judgment and order dated 18.9.2000 dismissed the petition on the ground that no regular departmental inquiry was held in the matter. Hence, this Letters Patent Appeal.

4. Though the writ petition i.e. Special Civil Application No. 9796 of 2000 was labelled as petition under Article 226 & 227 of the Constitution, strictly speaking, it was a petition under Article 227 of the Constitution which is clear from the order of the learned Single Judge also. It is clear from the order of the learned Single Judge that he has refused to exercise his supervisory jurisdiction under Article 227 of the Constitution on facts of this case.

5. In view of the above, without going into the legality and validity of the order passed by the learned Single Judge the Appeal is required to be dismissed. We may make it clear that even if the Appeal was maintainable then also, on peculiar facts of the case, we would not have entertained the Appeal because petty amount of L.T.C. i.e. Rs.5376/- involved in this Appeal

on which penal interest of Rs.10752/- was charged and that it is an old case of 1980 where the allegation against the respondent was that he got L.T.C. for the Block of 1983. Thus, by now almost two decades have passed. One more aspect of the case, namely, is that the respondent was on the verge of retirement when the preliminary inquiry was started and the order of recovery was passed by the Appellant No.1.

In view of the above discussion, this Appeal fail and is hereby dismissed.

Civil Application No.9225/00 is dismissed as the main Appeal is dismissed.

(B.J. Shethna, J.)

Date : September 29, 2003

(Ravi R.Tripathi,J.)

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